SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 491

THE STATE TAX COMMISSION OF UTAH, and IRWIN ARNOVITZ, R. E. HAMMOND, H. P. LEATHAM and J. WILL KNIGHT, members thereof, *Petitioners*,

vs.

W. Q. VAN COTT.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH AND BRIEF IN SUPPORT THEREOF

IRWIN ARNOVITZ,
Chairman of State Tax Commission of Utah

JOSEPH CHEZ, Attorney General of Utah,
By JOHN D. RICE, Deputy,

ALFRED KLEIN,
Attorney for State Tax Commission of Utah.
Attorneys for Petitioners.

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CASES CITED

REFERENCES AND AUTHORITIES

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TO THE HONORABLE CHARLES EVANS HUGHES, CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners, the State Tax Commission of Utah and Irwin Arnovitz, R. E. Hammond, H. P. Leatham and J. Will Knight, members thereof, pray that a Writ of Certiorari issue to review the decree or decision entered May 6, 1938, in the Supreme Court of the State of Utah in the above entitled cause (R. 63) (Utah) 79 Pacific (2d) 6. A petition for rehearing was duly made to that court on the 11th day of June, 1938, and was denied on the 5th day of July, 1938. (R. 63-64.)

The whole record is before this Honorable Court on this petition for a Writ of Certiorari, which is made within the time limit prescribed by statute and the rules of this Court. The Supreme Court of the State of Utah is the highest court of law and equity in the State of Utah, and said decree sought to be reversed is a final decree of said court.

QUESTION PRESENTED AND STATEMENT OF FACTS

The sole question presented in this action is whether or not the respondent's salary as agency counsel for the Reconstruction Finance Corporation, hereinafter called the R. F. C., and as counsel for the Regional Agricultural Credit Corporation of Salt Lake City, hereinafter called the R. A. C. C., are either or both taxable income under the Utah State Income Tax Law, Chapter 14, Title 80, Revised Statutes of Utah, 1933, as amended. A determination of this federal question mainly depends: first, on whether these two corporations exercise essential federal governmental functions known and contemplated at the time our Constitution was adopted; second, whether the salaries are exempt because of any established federal constitutional privilege or principle; third, whether these two agencies are of such a character and so intimately associated with the performance of an indispensable function of the federal government that any taxation of salaries paid by them would threaten a sufficient interference with such a function of the federal government as to be considered beyond the reach of the State taxing power; fourth, whether the burden of the tax is so direct that it tends to impede and burden the federal government in performing an essential governmental function; and, fifth, whether the taxation of the salaries of a lawyer of the two agencies has the effect of interfering with the exercise of an essential federal governmental function.

The respondent, in his income tax return to the State of Utah for the year 1935, claimed an exemption of his salaries received from the R. F. C. and the R. A. C. C.-(R.

1.) The R. F. C., briefly, was created by Congress, patterned after the War Finance Corporation, and to give relief to financial institutions by the rehabilitation of finance, industry and commerce. The R. A. C. C. was largely engaged in loaning moneys to livestock raisers in distressed circumstances. Any profits derived from the operation of either go to the Treasury of the United States. The Utah State Tax Commission made a finding of respondent's income tax liability and proposed an income tax deficiency based upon a net income which included the salaries in question. (R. 3.) It was the position of the Tax Commission in including the salaries as taxable income that these federal corporations were not engaged in performing essential governmental functions because the government, by means of these corporations lending money for profit, had entered into competition with private banking and lending agencies. The cause came to the Supreme Court of the State of Utah on certiorari from the decision of the Tax Commission denying a redetermination of the income tax deficiency.

In his argument before the Utah Supreme Court the respondent herein maintained that the salaries in question were exempt from taxation because of an established principle of our constitutional system of dual government that the instrumentalities, means and operations whereby the United States exercises its governmental powers are exempt from taxation by the states. The petitioners herein maintained that the activities of the R. F. C. and the R. A. C. C. are not essential governmental functions, but rather functions of a proprietary nature, and that, therefore, there was no federal principle of immunity. The Supreme Court of the State of Utah reversed the order of the Utah State Tax Commission and remanded the cause to the Tax Commission with instructions to redetermine the tax and to allow the deductions claimed by the respondent, for the reason that the salaries were received for services rendered in connection with the exercise of an essential governmental

function, because of the Utah Supreme Court's interpretation of certain decisions of this Honorable Court. It is submitted that the Supreme Court of Utah decided this federal question contrary to the applicable decisions of this Honorable Court.

STATUTES INVOLVED

The statutes of the State of Utah, material to this action, contained in the Utah Income Tax Law, Chapter 14, Title 80, Revised Statutes of Utah, 1933, as amended by Chapter 90, Laws of Utah, 1935, are as follows:

Sec. 80-14-2, R. S. Utah 1933, as amended:

"There shall be levied, collected and paid for each taxable year upon the net income of every resident of the State, a tax equal to the sum of the following:

"(1) One per cent of the first $1,000 of the amount of net income in excess of the credits against net income provided in Section 80-14-7.

"(2) Two per cent of the next $1,000 of such excess amount.

"(3) Three per cent of the next $1,000 of such excess amount.

"(4) Four per cent of the next $1,000 of such excess amount.

"(5) Five per cent of the remainder of such excess amount."

Sec. 80-14-3 reads:

"'Net income' means the gross income computed under Section 80-14-4 less the deductions allowed by Section 80-14-5."

In defining what consitutes "gross income," Subsec. (2) (g) of Sec. 80-14-4, listing exemptions, reads as follows:

"(g) Amounts received as compensation, salaries or wages from the United States or any possession thereof for services rendered in connection with the exercise of an essential governmental function."

RULING OF THE COURT BELOW

The Supreme Court of the State of Utah decreed (Utah, 79 Pacific (2d) 6) (R. 63) that the R. F. C. and the R. A.

C. C. are instrumentalities used to enable the Federal Government to perform essential federal governmental functions, and that, therefore, in view of the doctrine of New York ex rel. Rogers vs. Graves, 299 U. S. 401, 57 S. Ct. 269, the salaries received for services rendered to them were exempt from state income taxation. The order of the Tax Commission denying the petition of the respondent herein for a redetermination of an income tax deficiency based upon the inclusion of salaries from the R. F. C. and the R. A. C. C. was reversed. A petition for rehearing was duly and regularly made to the Supreme Court of the State of Utah on the 11th day of June, 1938, and was denied on the 5th day of July, 1938. (R. 63-64.)

Your petitioners have presented to this Honorable Court and have filed herein a duly certified transcript of the record of this cause as the same appears in the Supreme Court of the State of Utah.

REASONS FOR GRANTING THE PETITION

It is the contention of the petitioners that the Supreme Court of the State of Utah has decided a federal question in a way not in accord with the applicable decisions of this Honorable Court, by holding that the R. F. C. and the R. A. C. C. were performing essential governmental functions and that the salaries received by the respondent for services rendered to them were not subject to income taxation by the State of Utah. This Honorable Court, in one of its latest expressions on the subject of taxation of government employees, namely, the case of Helvering, Commissioner of Internal Revenue vs. Gerhardt, decided May 23, 1938, 304 U. S. 405, 58 S. Ct. 969, 82 L. Ed. 962, applies a new theory of the rules of taxation to the question of immunity of state employees from federal income taxation. It was there held that no federal constitutional privilege or principle applies to exempt salaries of state employees from federal income taxation "when the burden on the state is so speculative and uncertain that if allowed it would re-

strict the federal taxing power" nor when the activities are "thought not to be essential to the preservation of state governments."

Thus the United States Supreme Court rejected the doctrine of immunity from the federal income tax of salaries received by employees of the state engaged in the steady expansion of activities of the state government into new fields not known at the time our Constitution was adopted. It is contended by the petitioners that this Honorable Court also rejected the reciprocal doctrine of immunity as applied to the immunity from state taxation of salaries received by employees of the R. F. C., the R. A. C. C. and similar activities of the Federal Government, engaged in this expanding function of governmental activities into new fields not known at the time of the adoption of our Constitution, which enterprises were once exclusively conducted by private individuals, when the burden thereon is conjectural and not substantial. It is contended that the decree of the Supreme Court of the State of Utah is not in accord therewith. That conflict was pointed out to the Utah Supreme Court in the Petition for Rehearing and it was submitted to the Utah Supreme Court that its decision did not follow the applicable decisions of this Honorable Court. Despite that fact, rehearing was denied. (R. 63-64.)

In the case of Allen vs. Regents of the University System of Georgia, 82 L. Ed. 975, 304 U. S. ....., 58 S. Ct. 980, this Court held that admissions to athletic contests were subject to the federal tax provided by Section 500(a)(1) of the Revenue Act of February 26, 1926, as amended by Section 711 of the Revenue Act of June 6, 1932.

This Honorable Court there proceeded on the theory that the conduct of exhibitions for admissions paid by the public is not such a function of state government as to be free from the burden of a nondiscriminatory tax laid on all admissions to public exhibitions for which an admission fee is charged, however essential a system of public education is to the existence of the state. This Court said that the

state had embarked in a business having incidents of similar enterprises usually conducted for private gain. That, we think, is the very situation here. The United States Government, in creating the R. F. C. and the R. A. C. C., has embarked in a business having the incidents of similar enterprises usually conducted for private gain. These functions performed by the R. F. C. and R. A. C. C., are not such necessary governmental functions of the federal government that a tax laid upon the salary of the lawyer for these agencies will result in curbing the continued existence of any essential federal governmental function.

For these reasons it is respectfully submitted that this petition should be granted.

IRWIN ARNOVITZ,
Chairman of State Tax Commission of Utah

JOSEPH CHEZ, Attorney General of Utah,
By JOHN D. RICE, Deputy,

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PETITIONERS' BRIEF

OPINION OF COURT BELOW

The opinion of the court below, in which the decree is sought to be reversed, was delivered by the Supreme Court of the State of Utah, the highest court of law and equity in the State of Utah. It was written by Chief Justice William H. Folland and unanimously concurred in by Justices Ephraim Hanson, David W. Moffat, James H. Wolfe and Martin M. Larson. It appears on pages 47 to 63 of the Record and is reported at 79 Pacific (2d) 6.

JURISDICTION

The jurisdiction of this court is invoked under Section 237(a) of the Judicial Code, as amended by the Act of February 13, 1925, c 229 (43 Stat. 937) 28 U. S. C. A. 344. The decree of the Supreme Court of the State of Utah, which decree is sought to be reversed, was entered May 6, 1938. (R. 63.) Petition for rehearing was duly and regularly filed on June 11, 1938, and denied by that court on July 5, 1938. (R. 63-64.) An extension of sixty days for filing a petition for Writ of Certiorari was granted by the Hon. Pierce Butler on October 3, 1938. (R. 66.) The petition to the Supreme Court of the United States for a Writ of Certiorari to the Supreme Court of the State of Utah is a part of and precedes this Brief.

This cause is an action of law to determine whether or not the respondent's salaries as agency counsel for the Reconstruction Finance Corporation, hereafter called the R. F. C. and as counsel for the Regional Agricultural Credit Corporation of Salt Lake City, hereafter called the R. A. C. C., are either or both taxable income under the Utah State Income Tax Law. It was contended and determined by the Supreme Court of the State of Utah that Subsection (2)(g) of Section 80-14-4, Revised Statutes of Utah, 1933, providing that "amounts received as compensation, salaries or wages from the United States * * * for services rendered in connection with the exercise of an essential governmental function" shall not be included in gross income and shall be exempt from state income taxation, was applicable to the salaries received by the respondent from the R. F. C. and the R. A. C. C., because these federal agencies were exercising essential governmental functions.

The Utah Supreme Court refused to adopt the position of the petitioners, which we contend to be legal and proper, that the activities carried on by the respondent are clearly of such a character that they were not received in the exercise of an essential governmental function, but were rather received by a federal employee engaged in an expanding function of governmental activities into new fields not known at the time of the adoption of our Constitution, when the burden of the income tax upon the agencies is conjectural and does not substantially preclude or burden the agencies' powers and duties.

The Tax Commission repeatedly contended before the Supreme Court of the State of Utah that a decision not in accord with its income tax deficiency would be deciding a federal question contrary to the applicable decisions of this Honorable Court. The decree of the Utah Supreme Court directly held otherwise and based its entire decision on its interpretation of this Honorable Court's decisions. We firmly submit that that court erroneously interpreted the applicable decisions.

It is submitted that certiorari is a proper remedy in petitioning that a decision on a federal question of immunity from taxation of governmental employees be reviewed by this Honorable Court. The cases in accord are numerous. It should suffice to cite but a few of the more recent applicable cases in which certiorari was allowed to review such a decision: Brush vs. Commissioner of Internal Revenue, 300 U. S. 352, 81 L. Ed. 433, 57 S. Ct. 495; Helvering vs. Powers, 293 U. S. 214, 55 S. Ct. 171, 79 L. Ed. 291; Helvering vs. Therrell, 303 U. S. 323, 58 S. Ct. 539, 82 L. Ed. 537 (decided February 28, 1938); and Helvering vs. Gerhardt, 304 U. S. 405, 58 S. Ct. 969, 82 L. Ed. 962.

FACTS

The facts already have been set out sufficiently in the Petition for a Writ of Certiorari. We here emphasize certain of these facts, amplifying on a discussion of the nature and operations of the R. F. C. and the R. A. C. C. The respondent, in his income tax return for the calendar year 1935, claimed as exempt his salary as agency counsel for the R. F. C. and the R. A. C. C. on the ground that both of these corporations were instrumentalities of the Federal Government, exercising essential federal governmental functions. The petitioners take the view that the Federal Government, by means of these corporations, has entered the field of business, and that, through them, is lending money for profit in competition with private banking and other lending agencies, and that their functions are, therefore, not essentially governmental.

The question for determination, therefore, is whether W. Q. Van Cott's salary as agency counsel for the R. F. C., and his salary as counsel for the R. A. C. C. are either of them or both taxable income under the Utah Income Tax Law, Chapter 14, Title 80, Revised Statutes of Utah, 1933, as amended by Chapter 90, Laws of Utah, 1935.

The material part thereof, Subsection (2)(g) of Section 80-14-4, Revised Statutes of Utah, 1933, reads as follows:

Exclusions from Gross Income

"(2) The following items shall not be included in gross income and shall be exempt from taxation under this chapter:"

Tax-Free Salaries

"(g) Amounts received as compensation, salaries or wages from the United States or any possession thereof for services rendered in connection with the exercise of an essential governmental function."

The R. F. C. was created by Congress on recommendation of President Herbert Hoover early in the period commonly called the Depression. The title to the act creating it is "An Act to provide emergency financing facilities for financial institutions, to aid in financing agriculture, commerce and industry, and for other purposes." The capital stock of $500,000,000 was all subscribed by the United States. The corporation is controlled by a board of directors, one of whom is the Secretary of the Treasury, and the other six members are appointed by the President, with the advice and consent of the Senate. It has the same franking privilege for its mail as the various executive departments of the Government. It is authorized, with the approval of the Secretary of the Treasury, to issue its negotiable obligations which are fully and unconditionally guaranteed by the United States. During the years 1932 and 1933, business was paralyzed, and many institutions considered sound were hard pressed for funds to meet the ordinary demands of business. Banks and other credit institutions turned to the R. F. C. for aid. The purpose that it is aimed to serve is not profit to the Government, but the rehabilitation of finance for industry and commerce, though profit may at times result from one or more of its activities. Such profit realized goes to the Treasury of the United States.

The R. A. C. C. has been engaged under the Farm Credit Administration of the United States. The capital of this agency was subscribed by the R. F. C., and paid for out of the unexpended balance of amounts which were allocated

and made available to the Secretary of Agriculture under the R. F. C. Act. During the years it had been in existence, numerous sums of money have been loaned in Wyoming, Utah, Arizona, Idaho, Nevada and California. Most of this money has been received back in liquidation, the proceeds of which go to the Treasury of the United States. It has no bank account. Its funds are allocated and appropriated each year by acts of Congress. During the years 1932 and 1933, the R. A. C. C. was largely engaged in loaning moneys to large stock raisers who had been in distressed circumstances, but early in 1934 the R. A. C. C. ceased to make further loans, and since that time has been in liquidation. If there is any profit derived from the operation of the R. A. C. C., it will go to the Treasury of the United States.

ARGUMENT

The argument in this case, though divided into three sections, each concerns the subject matter of the doctrine of immunity from taxation, as applied to our dual system of government, in which the individual states are sovereign powers as well as the Federal Government. Certain principles or rules of law have been laid down on the subject matter of the exemption from taxation of the instrumentalities, means and operations, whereby the one sovereign exercises its governmental powers.

POINT I

A Conflict of Decisions, as Between the Supreme Court of Montana, the Highest Court of the State of Montana, and the Supreme Court of the State of Utah, Both on the Exact Subject Matter on the Exemption from State Income Taxation of Salaries Received from the R. F. C., Should be Resolved in Favor of the Decree of the Montana Court Rather than the Utah Supreme Court.

The Supreme Court of Montana, in the case of Pomeroy vs. State Board of Equalization, 99 Montana 534, 45 Pa-

cific (2d) 316, construed a statute excluding from gross income "salaries, wages and other compensation received from the United States or officers or employees thereof," and held that compensation received by an employee of the R. F. C. was not excluded under this exemption. The Utah statute, cited heretofore, in providing for exclusion from taxation, does not go nearly as far as the Montana statute, in that the Utah statute only exempts salaries received for services performed in the exercise of an essential governmental function. There is no attempt made under the Utah statute to exclude from gross income salaries of all of the officers of the United States, or employees thereof. The respondent herein claims that the Montana case is clearly wrong, whereas the contention of the petitioners is that the Montana court was correct, in view of the recent decision of this Honorable Court in the case of Helvering vs. Gerhardt, supra.

POINT II

The Salaries Received by the Respondent from the R. F. C. and the R. A. C. C. were not Received in Connection with the Exercise of an Essential Federal Governmental Function Known and Contemplated at the Time our Constitution was Adopted, and are, Therefore, Not Within the Exemption of Subsection (2)(g) of Section 80-14-4, Revised Statutes of Utah, 1933.

The broad general rule of law, which settled the question that under our dual system of government one sovereign cannot tax the instrumentality of another sovereign, is the case of McCulloch vs. State of Maryland, 4 Wheaton's Reports 316. That case is of interest in the problem now before this Court only as a matter of historical background. Under the facts in the McCulloch vs. Maryland case, the state was attempting to directly tax a bank established by the Congress of the United States, and as we understand this case, Chief Justice Marshall held that Congress could provide that a state could not tax an instrumentality of the Federal Government; that Congress could exercise its

power by virtue of the constitutional provisions which say that the acts of Congress should be the supreme law of the land. We have no such question in this case because we are not attempting to tax directly either the Reconstruction Finance Corporation or the Regional Agricultural Credit Corporation. We are also not attempting in any way to tax either their income or their property.

As an outgrowth of the case of McCulloch vs. Maryland, there came two other cases in which the doctrine enunciated in McCulloch vs. Maryland, supra, was extended. The first was Dobbins vs. Erie County, 16 Pet. 435; 10 L. Ed. 1022. In the Dobbins case this Court held that Erie County could not impose for county purposes, a tax upon the salary of an employee of the United States Revenue service.

The second case, which is based upon McCulloch vs. Maryland and which we deem to be an extension of the doctrine there recited, is Collector vs. Day, 11 Wallace 113, 20 L. Ed. 122. In Collector vs. Day, the converse to the Dobbins case was decided. It held that the United States could not impose a tax upon the income of a judicial officer of a state, because a judge was a necessary instrument in the performance of the functions of the state.

We believe that the decisions in Dobbins vs. Erie County, supra, and Collector vs. Day, supra, extend the rule laid down in the McCulloch vs. Maryland, because the taxes levied in the former cases cited were levied against the individual employed and not directly against the instrumentality as in McCulloch vs. Maryland.

This Court next definitely qualified the cases of Collector vs. Day and Dobbins vs. Erie County in the case of South Carolina vs. U. S., 26 S. Ct. 110, 199 U. S. 437, 59 L. Ed. 26, in distinguishing between a necessary governmental function and an activity of the state in a proprietary capacity. The state of South Carolina maintained a liquor monopoly, established distilleries and prohibited the wholesale and retail sale of liquor and private sale by other than state dispensors. The United States levied an excise

tax upon the spirituous liquors. The state of South Carolina claimed that the liquor dispensaries, being state instrumentalities, were not subject to any tax levied by the Federal Government, and relied as authority for this proposition on the case of McCulloch vs. Maryland. In deciding what constituted a necessary governmental function, this Court said:

> "Now, if it be well established, as these authorities say, that there is a clear distinction as respects responsibility for negligence between the powers granted to a corporation for governmental purposes and those in aid of private business, a like distinction may be recognized when we are asked to limit the full power of imposing excises granted to the national government by an implied inability to impede or embarrass a state in the discharge of its functions. It is reasonable to hold that while the former may do nothing by taxation in any form to prevent the full discharge by the latter of its governmental functions, yet, whenever a state engages in a business which is of a private nature, that business is not withdrawn from the taxing power of the nation.
>
> "For these reasons we think that the license taxes charged by the Federal Government upon persons selling liquor are not invalidated by the fact that they are the agents of the state, which has itself engaged in that business."

This Court will recognize that in the above case it is a tax directly against the business of the state and not against the salaries of any person in the employ of the liquor dispensaries. Certainly if the Federal Government can levy an excise upon the business, they can levy a tax upon the incomes received by persons in the conduct of that business.

We fail to see any difference between the state's entering the liquor business and the Federal Government entering the banking business, to make loans to corporations and individuals in the same manner as any commercial bank would make loans. On loans taken by persons in the Re-

construction Finance Corporation, security is given, interest is paid and in every way the business is conducted as though it were done with a private banking house.

It might be argued by the respondent in this case, that because of the economic conditions existing in the country at the time the Reconstruction Finance Corporation was organized, it makes that organization a necessary governmental function. We do not believe that such an argument is tenable, because in the South Carolina vs. U. S. case, supra, this Court recognized that the sale and control of liquor by a state is in the exercise of the police power of the state and is based upon the general public welfare. The whole test, as we see it in the cited case, is that the state is acting in a proprietary capacity in a private business and is not conducting a necessary governmental function. The same is applicable with the R. F. C. and the R. A. C. C. The holding, in the case of the State of South Carolina vs. U. S., supra, was sustained on practically the same grounds and under the same reasoning in the case of Ohio vs. Helvering, 292 U. S. 360, 54 S. Ct. 725, 78 L. Ed. 1307.

The term "essential governmental functions" first appears in the case of Flint vs. Stone Tracy Co., 31 S. Ct. 342, 220 U. S. 107. There this court, in discussing the income tax levied upon corporations, says the following relative to the imposing of taxes upon essential governmental functions:

> "We come to the question, Is a so-called public-service corporation, such as the Coney Island and Brooklyn Railroad Company, in case No. 409, and the Interborough Rapid Transit Company, No. 442, exempted from the operation of this statute? In the case of South Carolina vs. United States, 199 U. S. 437, 50 L. Ed. 261, 26 S. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737, this court held that when a state, acting within its lawful authority, undertook to carry on the liquor business, it did not withdraw the agencies of the state, carrying on the traffic, from the operation of the in-

ternal revenue laws of the United States. If a state may not thus withdraw from the operation of a federal taxing law a subject-matter of such taxation, it is difficult to see how the incorporation of companies whose service, though of a public nature, is, nevertheless, with a view to private profit, can have the effect of denying the federal right to reach such properties and activities for the purposes of revenue.

"It is no part of the essential governmental functions of a state to provide means of transportation, supply artificial light, water and the like. These objects are often accomplished through the medium of private corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are nevertheless private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred.

"The true distinction is between the attempted taxation of those operations of the states essential to the execution of its governmental functions, and which the state can only do itself, and those activities which are of a private character. The former, the United States may not interfere with by taxing the agencies of the state in carrying out its purposes; the latter, although regulated by the state, and exercising delegated authority, such as the right of eminent domain, are not removed from the field of legitimate federal taxation."

In the case of Metcalf & Eddy vs. Mitchell, 269 U. S. 514, 46 S. Ct. 172, 70 L. Ed. 384, decided in 1926, it was held that a tax may be imposed by the Federal Government upon the income of an engineer who contracted his services to the state in connection with water supply and sewage disposal projects. It was further held that the performance of the work by the engineer was not impaired by the tax. Another case which throws some light upon the holdings of the Supreme Court is Blair vs. Matthews, 29 F. (2d) 892. This decision was reversed by the Supreme Court upon the authority of Metcalf & Eddy vs. Mitchell, supra;

Howard vs. Commissioner of Internal Revenue, 29 F (2d) 895 (reversed without opinion in 1929 by the Supreme Court) 280 U. S. 596, 50 S. Ct. 87, 74 L. Ed. 593; Ogilvie vs. Commissioner of Internal Revenue, 36 F. (2d) 473; Roberts vs. Commissioner of Internal Revenue, 44 F. (2d) 168. In all of these cases it has been held by the courts that employees in various capacities paid by the state or its subdivisions are subject to the federal income tax. Under these decisions, we do not believe that it can be contended by this respondent that the question which confronts this court is whether or not this plaintiff is paid by the Treasurer of the United States or is employed by a corporation whose entire capital stock is owned by the Federal Government.

But a new test of immunity of essential governmental functions has been laid down by this Honorable Court. It is not whether an instrumentality is engaged in an essential federal governmental function, but the new test is whether it is engaged in an essential governmental function known and contemplated at the time our Constitution was adopted. This new test is forcibly brought out in the case of Guy T. Helvering vs. Gerhardt, decided May 23, 1938, 304 U. S. 405, 58 S. Ct. 969, 82 L. Ed. 962. No doubt this most recent case is well fixed in the minds of all of us so that there is no great necessity for detail.

In the Gerhardt case, the Port Authority, a bi-state corporation, was created by compact between New York and New Jersey, and approved by the Congress of the United States by Joint Resolution of August 23, 1921, c. 77, 42 Stat. 174. In conformity to a comprehensive plan for improving the Port of New York, lying partially within each state and facilitating its use, and pursuant to further legislation of the two states, several bridges and tunnels were built, financed in a large part by funds advanced by the two states and by the Port Authority's issue and sale of bonds. The Port Authority's "projects are all said to be operated in behalf of the two states and in the interest of

the public and none of its profits enure to the benefit of private persons. Its property and the bonds and other securities issued by it are exempt by statute from state taxation. * * * Statutes of New York and New Jersey relating to the various projects of the Port Authority declare that they are 'in all respects for the benefit of the people of the two states, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and the Port Authority shall be regarded as performing a governmental function in undertaking the said construction, maintenance and operation and in carrying out the provisions of law relating to the said (bridges and tunnels) and shall be required to pay no taxes or assessments upon any of the property acquired by it for the construction, operation and maintenance of such' bridges and tunnels."

Upon these facts this Honorable Court held that the imposition of the Federal Income Tax upon the salaries of the employees of the Port Authority neither precluded nor threatened unreasonably to obstruct any function essential to the continued existence of the state government. Further, it concluded that if the immunity were allowed, its effects would be an inadmissable restriction upon the taxing power granted to the Federal Government by the Constitution of the United States. It is noteworthy that this Court, in the majority opinion of Justice Stone, lays great stress upon the steady expansion in activity of the state governments into new fields not known at the time our Constitution was adopted or the decision of McCulloch vs. Maryland rendered. This Court, realizing that such expansion, under the current decisions, would serve to remove from the taxing power of the federal government increasing sources of income, indicates that to a great extent a consideration of this increased activity of governmental agencies motivates it toward its decision refusing to adopt the doctrine of immunity from federal taxation of the salaries of state employees in the case then under con-

sideration. We submit that this reasoning is equally applicable in the instant case. With the steady expansion in the activities of the Federal Government this immunity from state taxation becomes increasingly serious, bringing within the sphere of immunity from taxation the salaries of an ever increasing number of employees of the various governmental agencies.

The following quotations from the majority opinion in this important and recent case indicate the ratio decidendi on this new test:

> "With the steady expansion of the activity of state governments into new fields they have undertaken the performance of functions not known to the states when the Constitution was adopted, and have taken over the management of business enterprises once conducted exclusively by private individuals subject to the national taxing power. In a complex economic society, tax burdens laid upon those who directly or indirectly have dealings with the states, tend, to some extent not capable of precise measurement, to be passed on economically and thus to burden the state government itself. But if every federal tax which is laid on some new form of state activity, or whose economic burden reaches in some measure the state or those who serve it, were to be set aside as an infringement of state sovereignty, it is evident that a restriction upon national power, devised only as a shield to protect the states from curtailment of the essential operations of government which they have exercised from the beginning, would become a ready means for striking down the taxing power of the nation. See South Carolina vs. United States, 199 U. S. 437, 454-455, 50 L. Ed. 261, 266, 267, 26 S. Ct. 110, 4 Ann. Cas. 737. Once impaired by the recognition of a state immunity found to be excessive, restoration of that power is not likely to be secured through the action of state legislatures; for they are without the inducements to act which have often persuaded Congress to waive immunities thought to be excessive."
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> "The challenged taxes * * * are upon the net income of respondents, derived from their employment in

common occupations not shown to be different in their methods or duties from those of similar employees in private industry. The taxpayers enjoy the benefits and protection of the laws of the United States. They are under a duty to support its government and are not beyond the reach of its taxing power. *A nondiscriminatory tax laid on their net income, in common with that of all other members of the community, could by no reasonable probability be considered to preclude the performance of the function which New York and New Jersey have undertaken, or to obstruct it more than like private enterprises are obstructed by our taxing system. Even though, to some unascertainable extent, the tax deprives the states of the advantage of paying less than the standard rate for the services which they engage, it does not curtail any of those functions which have been thought hitherto to be essential to their continued existence as states.* At most it may be said to increase somewhat the cost of the state governments because, in an interdependent economic society, the taxation of income tends to raise (to some extent which economists are not able to measure, see Indian Motorcycle Co. vs. United States, supra, p. 581, footnote 1) the price of labor and materials. The effect of the immunity if allowed would be to relieve respondents of their duty of financial support to the national government, in order to secure the state a theoretical advantage so speculative in its character and measurement as to be unsubstantial. A tax immunity devised for protection of the states as governmental entities cannot be pressed so far." (Italics ours.)

This Court, above, adopted "two guiding principles of limitation for holding the tax immunity of state instrumentalities to its proper function." The second will be discussed in the next succeeding point of argument. The first "dependent upon the nature of the function being performed by the state or in its behalf, excludes from immunity activities thought not to be essential to the preservation of state governments" affords a new test of the term "essential governmental function," which should be applied to the instant case.

When this Honorable Court rejected the doctrine of immunity from the Federal Income Tax of salaries received by employees of the state, engaged in functions not known at the time our Constitution was adopted, when the burden upon the state function was conjectural, we submit that at the same time this court also rejected the doctrine as applied to the immunity from state taxation of salaries received by employees of the Federal Government, engaged in this expanding function of governmental activities into new fields not known at the time of the adoption of our Constitution, which enterprises were once exclusively conducted by private individuals, when the burden thereon is conjectural and not substantial. The imposition of the Utah Income Tax on the income of the respondent herein, in common with that of all Utah residents, could by no reasonable probability be considered to substantially preclude or burden the powers and duties of the R. F. C. or the R. A. C. C. We believe that the above decision furnishes legal justification and precedent upon which this Court may and should rely in reversing the decision which this brief questions.

With relation to this principle this Court said:

> "As was pointed out in Metcalf & Eddy vs. Mitchell, supra, 524, there may be state agencies of such a character and so intimately associated with the performance of an indispensable function of state government that any taxation of it would threaten such interference with the functions of the government itself as to be considered beyond the reach of the federal taxing power. If the tax considered in Collector vs. Day, supra, upon the salary of an officer engaged in the performance of an indispensable function of the state which cannot be delegated to private individuals, may be regarded as such an instance, that is not the case presented here."

It is submitted that the activities carried on by the respondent in this case as counsel for the Reconstruction Finance Corporation and the Regional Agricultural Credit

Corporation, which agencies are engaged in a field not known at the time our Constitution was adopted, are clearly of such a character that they should be classified with the activities of the employees of the New York Port Authority rather than with the activities involved in the case of Collector vs. Day, which were those of probate judge of a state court. We submit that this conclusion should be reached on the merits of the case, but maintain that the disposition of this Court, as it is expressed in the paragraph quoted immediately above, precludes any other result.

The ultimate fact to be determined under this interpretation is the nature of the operations of the Reconstruction Finance Corporation and the Regional Agricultural Credit Corporation. An examination of their articles of incorporation and their various activities discloses that they operate as commercial banks and in many instances perform functions which are ordinarily, and which before the establishment of these two corporations by the Federal Government, had been handled solely and exclusively by privately owned commercial banking enterprises or other privately owned financial corporations. We submit, therefore, that the operation of these two corporations is not the exercise of an essential governmental function known and contemplated at the time of the adoption of our Constitution, but is an operation by the Federal Government in the vastly increasing field of private governmental business and therefore proprietary in nature.

Further, Mr. Justice Black, in a special concurring opinion in the Gerhardt case, makes it quite clear that in his opinion, the entire test of whether or not the function of the employee is essential or non-essential should be disregarded. The following quotations from his opinion clearly indicate that this is his conclusion:

> "Testing taxability by judicial determination that State governmental functions are essential or non-essential, contributes much to the existing confusion.

I believe the present case affords occasion for appropriate and necessary abandonment of such a test, particularly since recent decisions have already substantially advanced toward a reexamination of the doctrine of intergovernmental immunity. (See Brushaber vs. Union Pacific R. R. Co., 240 U. S. 1; Peck & Co. vs. Lowe, 247 U. S. 165, 172; Eisner vs. Macomber, 252 U. S. 189; Evans vs. Gore, 253 U. S. 245.)

• • • "There is not, and there cannot be, any unchanging line of demarcation between essential and non-essential governmental functions. Many governmetal functions of today have at some time in the past been non-governmental. The genius of our government provides that, within the sphere of constitutional action, the people—acting not through the courts, but through their elected legislative representatives—have the power to determine as conditions demand, what services and functions the public welfare requires.

"Surely, the Constitution contains no imperative mandate that public employees—or others—drawing equal salaries (income) should be divided into tax-paying and non-taxpaying groups. Ordinarily such a result is discrimination. Uniform taxation upon those equally able to bear their fair shares of the burdens of government is the objective of every just government."

Furthermore, the tax on the salary of the lawyer for the two agencies does not impede and burden the United States in performing any essential governmental functions. There is, in effect, no burden on the United States Government in one of its essential governmental functions, because the salary of the attorney is taxed. There is nothing to show that the United States will not be able to similarly obtain professional services of lawyers, for the same remuneration, because of this tax. Justice Roberts, in his dissenting opinion in the case of Brush vs. Commissioner of Internal Revenue, 300 U. S. 352, 81 L. Ed. 691, pointed out this argument when he said:

"The petitioners seek to show the reality of the supposed burden by the suggestion that if his salary and the compensation of others employed by the city

is subject to Federal Income Tax, the municipality will be compelled to pay higher salaries in order to obtain the services of such persons, and the consequent aggregate increase in outlay will entail a heavy financial load. We know, however, that professional services are offered in the industry and business field; and that while there is no hard and fast standard of compensation, and men bargain for their rewards, salaries do bear some relation to experience and ability. There is a market in which a professional man offers his services and municipalities are bidders in that market. We know, further, that those in private employment, holding positions comparable to that of the petitioner, pay a tax equal to that levied upon him. It is clear that any consideration of the petitioner's immunity for federal income tax would be altogether remote, impalpable, and unascertainable in influencing him to accept a position under the municipality rather than under a private employee.

"In reason and logic it is difficult to differentiate the present case from that of a private citizen who furnishes goods, performs work, or renders service to a state or municipality under a contract or an officer or employee of a corporation which does the same."

In a study made by the United States Department of Justice entitled "Taxation of Government Bondholders and Employees—The Immunity Rule and the Sixteenth Amendment," (1938) the study being made at the direction of the Honorable Homer Cummings, Attorney General of the United States of America, it is said:

"The trend in the judicial rules of tax immunity is such that, independently of the effect to be given the Sixteenth Amendment, it may well be urged that the government bondholder, officer and employee can claim no constitutional exemption from a nondiscriminatory income tax."

And again in the introduction of the same work it is written:

"The rules of intergovernmental tax immunity are not simple. They vary, moreover, from one period to

another. During the last term of the Supreme Court this process of change was greatly quickened. It is, therefore, not easy to analyze the doctrine of tax immunity. Conclusions cannot safely be drawn in terms of the decided cases alone. Their present authority must of necessity be measured against the trends in decisions, particularly those which have acquired momentum in recent years."

In the case of James vs. Dravo Contracting Company, 302 U. S. 134 this Honorable Court upheld a tax exacted by the State of West Virginia from a contracting corporation. The state tax provided that upon every person engaging or continuing within West Virginia in the business of contracting, the tax shall be equal to two per cent. of the gross income of the business. The respondent, the Dravo Contracting Company, entered into four contracts with the United States for the construction of locks and dams on various rivers within the state, and it was contended that the tax laid a direct burden upon the federal government. This Court there held that the tax was not laid upon the federal government, its property or officers; nor was it laid upon an instrumentality of the government or upon a contract of the government.

The Court, in deciding the case, made this comment:

"The contention ultimately rests upon the point that the tax increases the cost to the Government of the service rendered by the taxpayer. But this is not necessarily so. The contractor, taking into consideration the state of the competitive market for the service, may be willing to bear the tax and absorb it in his estimated profit rather than lose the contract. In the present case, it is stipulated that respondent's estimated costs of the respective works, and the bids based thereon, did not include, and there was not included in the contract price paid to respondent, any specified item to cover the gross receipts tax, although respondent knew of the West Virginia act imposing it, and respondent's estimates of cost did include 'compensation and liability insurance, construction bond and property taxes.'

"*But if it be assumed that the gross receipts tax may increase the cost to the Government, that fact would not invalidate the tax.* With respect to that effect, a tax on the contractor's gross receipts would not differ from a tax on the contractor's property and equipment necessarily used in the performance of the contract. Concededly, such a tax may validly be laid. Property taxes are naturally, as in this case, reckoned as a part of the expense of doing the work. Taxes may validly be laid not only on the contractor's machinery but on the fuel used to operate it. In Trinityfarm Constr. Co. vs. Grosjean, 291 U. S. 466, 78 L. Ed. 918, 54 S. Ct. 469, the taxpayer entered into a contract with the federal government for the construction of levees in aid of navigation and gasoline was used to supply power for taxpayer's machinery. A state excise tax on the gasoline so used was sustained. The Court said that if the payment of the state taxes imposed on the property and operations of the taxpayer 'affects the federal government at all, it at most gives rise to a burden which is consequential and remote and not to one that is necessary, immediate or direct.' But a tax of that sort unquestionably increases the expense of the contractor in performing his service and may, if it enters into the contractor's estimate, increase the cost to the government. The fact that the tax on the gross receipts of the contractor in the Alward case, 282 U. S. 509, 75 L. Ed. 496, 51 S. Ct. 273, 75 A.L.R. 9, supra, might have increased the cost to the government of the carriage of the mails did not impress the Court as militating against its validity.

"There is the further suggestion that if the present tax of two per cent. is upheld, the State may levy a tax of twenty per cent. or fifty per cent. or even more, and make it difficult or impossible for the government to obtain the service it needs. The argument ignores the power of Congress to protect the performance of the functions of the national government and to prevent interference therewith through any attempted state action. In Thomson vs. Union P. R. Co., 9 Wall. 579, 19 L. Ed. 792, supra, the Court pointedly referred to the authority of Congress to prevent such an interference through the use of the taxing power of the State. 'It cannot,' said the Court, 'be so used,

> indeed, as to defeat or hinder the operations of the national government; but it will be safe to conclude, in general, in reference to persons and State corporations employed in government service, that when Congress has not interposed to protect their property from State taxation, such taxation is not obnoxious to that objection'." See Alward vs. Johnson, 282 U. S. 509, 514, 75 L. Ed. 496, 499, 51 S. Ct. 273, 75 A.L.R. 9; also see Mason vs. Tax Commission, 302 U. S. 186, 82 L. Ed. page 154. (Italics ours.)

In view of the stand taken by this Court in James vs. Dravo Contracting Co., supra, holding that a state tax on income of governmental contractors does not lay an unconstitutional burden upon the federal government, it is submitted that the decision of this Court in the case of Guy T. Helvering vs. Philip L. Gerhardt et al, supra, is a proper interpretation of the law and that the present case is not distinguishable therefrom. The Gerhardt and the Dravo Contracting Co. cases are, therefore, authority for this Court to reexamine the subject matter involved and to decide that the total amount of salaries received by the respondent herein from the R. F. C. and the R. A. C. C. is taxable income under the Utah Income Tax Law on individuals, provided for in Section 80-14-2, Revised Statutes of Utah, 1933, as amended.

POINT III

There is no Established Federal Constitutional Privilege or Principle Preventing the Imposition of a State Income Tax upon Salaries Received from the R. F. C. and the R. A. C. C., Because the Imposition of Such a Tax Neither Precludes nor Threatens Unreasonably to Obstruct any Function Essential to the Continued Existence of the Federal Government, and Because the Burden on the Federal Government is so Speculative and Uncertain that, if the Immunity Were Allowed, it Would Restrict the State Taxing Power Without Affording any Corresponding Tangible Protection to the Federal Government.

The next and sole remaining question to be determined is whether the imposition of the Utah Individual Income Tax upon salaries received by employees of the R. F. C. or the R. A. C. C. is unconstitutional or in any way impedes the operations of the Federal Government. It is our opinion that the imposition of an income tax on such salaries does not measurably burden, nor threaten unreasonably to obstruct any function essential to the continued existence of the Federal Government. This, we contend, is the present trend of thought of the United States Supreme Court, as exemplified in the case of Guy T. Helvering vs. Gerhardt, decided May 23, 1938, supra.

To again quote from that opinion:

> "The fact that the expenses of the state government might be lessened if all those who deal with it were tax exempt was not thought to be an adequate basis for tax immunity in Metcalf & Eddy vs. Mitchell, supra, in Group No. 1 Oil Corp. vs. Bass, 283 U. S. 279, in Burnet vs. Jergins Trust, 288 U. S. 508; or in Helvering vs. Mountain Producers Corp., No. 699, decided March 7, 1938. When immunity is claimed from a tax laid on private persons, it must clearly appear that the burden upon the state function is actual and substantial, not conjectural. Willcutts vs. Bunn, supra, 231. The extent to which salaries in business or professions whose standards of compensation are otherwise fixed by competetive conditions may be affected by the immunity of state employees from income tax is to a high degree conjectural.
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> "The basis upon which constitutional tax immunity of a state has been supported is the protection which it affords to the continued existence of the state. To attain that end it is not ordinarily necessary to confer on the state a competitive advantage over private persons in carrying on the operations of its government. There is no such necessity here, and the resulting impairment of the federal power to tax argues against the advantage. The state and national governments must co-exist. Each must be supported by taxation of those who are citizens of both. The mere fact that the economic burden of such taxes may be passed on to

> a state government and thus increase to some extent, here wholly conjectural, the expense of its operation, infringes no constitutional immunity. Such burdens are but normal incidents of the organization within the same territory of two governments, each possessed of the taxing power."

It is evident that this portion of the decision embodying the second of "two guiding principles of limitation for holding the tax immunity of state instrumentalities to its proper function" "forbids recognition of the immunity when the burden on the state is so speculative and uncertain that if allowed it would restrict the federal taxing power without affording any corresponding tangible protection to the state government". This is the proposition chiefly relied upon in this point. This principle, therefore, as applied to officers and employees of the R. F. C. and the R. A. C. C., is that the tax thereof, imposed upon the individuals, places no actual tangible burden upon the Federal Government.

The onus of first proving such a burden falls upon the Federal Government, and then proving that the power to engage in the activities of the R. F. C. and R. A. C. C. springs directly from or is incidental to some expressed or delegated power, falls directly upon the taxpayer, who is the respondent herein. It is submitted that the respondent cannot tangibly show that the tax in question is passed on to the federal agencies and actually burdens their operations, or that the activities of these agencies spring directly from or are incidental to some such delegated power. In our opinion, the decision of the Gerhardt case deprives the officers and employees of the R. F. C. and the R. A. C. C. of immunity from state income taxation, since this Honorable Court indicated that "a nondiscriminatory tax laid on their net income • • • could by no reasonable probability be considered to preclude the performance of the function • • • undertaken • • • or to obstruct it more than like private enterprises are obstructed by our taxing system".

As has already been pointed out, the doctrine of immunity is a reciprocal one and has equal application to both state and federal instrumentalities. The Federal Government has never contended, so far as can be ascertained, that the doctrine is not a reciprocal one and affords only the same protection to federal agencies as it affords to state agencies. Ambrosini vs. United States, 187 U. S. 1, 23 S. Ct. 1; Pollock vs. Farmers' Loan & Trust Co., 157 U. S. 429, 15 S. Ct. 654. The question is now presented, therefore, when the doctrine has been limited in its application to state agencies by the Port Authority cases, is not its application to federal agencies correspondingly weakened? In other words, what is to prevent the various states from levying nondiscriminatory taxes upon the compensation of the officers and employees of various federal agencies which function throughout the nation, when the burden is speculative and uncertain, and the imposition thereof neither precludes nor threatens unreasonably to obstruct any function essential to the continued existence of the Federal Government?

There are, of course, certain arguments to the contrary. While the doctrine of immunity was reciprocal in that it applies alike to both governments, nevertheless, the test of immunity may not be the same. The Federal Government is one of delegated powers, while the powers belonging to the states under the constitution are the reserved sovereign powers. Therefore, the Federal Government may constitutionally engage in any business provided it is within its delegated powers, and hence the test as to its functions is not whether they are being exercised as governmental powers, but whether they are being exercised as delegated powers. United States vs. Loghlan, 271 Federal 425; Clallam County vs. United States, 263 U. S. 341, 44 S. Ct. 121.

It is a further fact that this court has held in certain older cases that federal instrumentalities are immune from nondiscriminatory state taxes laid upon all banks oper-

ating in the state, from state taxes upon obligations of the United States, and from a tax upon certain offices, including the captain of a revenue cutter. Osborn vs. Bank, 9 Wheat. 738. It seems clear, however, that these taxes were considered as direct impositions upon the agency itself and not upon individual taxpayers.

In the light of the decision in the Port Authority cases, none of these arguments appears to be available. It is now apparent that the test of immunity in the case of a nondiscriminatory tax laid upon individuals is whether or not the burden of the tax is passed on to the agency employing those individuals to such an extent that it actually impedes its proper functioning. There is no reason why that test is not of equal application to both state and federal agencies alike.

It is noteworthy that Justice Stone in his opinion raised the question as to how far the immunity of federal agencies rests on a different basis from that of state agencies, but expressly declined to pass upon it, stating that other considerations, not present there, may be controlling. What those considerations were he did not indicate, and it would be difficult to surmise. Certainly, however, in view of the meticulous care with which Justice Stone reviewed the whole doctrine, it can safely be assumed that those other considerations, whatever they are, would not be permitted to conflict with the two guiding principles so carefully developed there. Those principles strike far deeper than any considerations that can readily be surmised. They stem from the constitutional necessity itself, already adverted to. In short, the burden theory upon which the Port Authority cases were decided is of the essence of the immunity.

It is, therefore, submitted that the imposition of the state income tax on the salaries from the R. F. C. and the R. A. C. C. does not substantially nor materially burden the continued existence of the Federal Government. This is particularly true when the burden on the Federal Government,

as in the instant case, is so speculative and uncertain that it would afford no tangible protection to the Federal Government corresponding to the restriction upon the state taxing power.

CONCLUSION

It is respectfully submitted that, under the facts as disclosed by the record in this case and the established rules of law, a Writ of Certiorari issue to review the decree of the Supreme Court of the State of Utah, entered May 6, 1938, and that this Court find that the respondent's salaries as agency counsel for the R. F. C. and as counsel for the R. A. C. C. are both taxable income under the State Income Tax Law of the State of Utah. It is submitted that the Supreme Court of the State of Utah has decided a federal question in a way not in accord with the applicable decisions of this Honorable Court, by its holding that the R. F. C. and the R. A. C. C. were performing essential federal governmental functions, and that the salaries received for services rendered to them were not subject to state income taxation. A final determination of this federal question is of extreme importance to the subject of state income taxation and revenues therefrom in each of the forty-eight states. With the steady expansion and activity of the Federal Government into new fields, not known at the time our Constitution was adopted, the theory of immunity from state income taxation to each of the employees thereof would serve to remove from the taxing power of the several states increasing sources of revenue.

The Gerhardt case, supra, should afford ample authority for this Honorable Court to reexamine the entire field of subject matter on the question of immunity of federal employees from state taxation, to the end that this Court should find: first, that the salaries in question were not received in connection with the exercise of an essential federal governmental function, known and contemplated at the time our Constitution was adopted, and, therefore,

are not within the exemption of Subsection (2)(g) of Section 80-14-4, Revised Statutes of Utah, 1933; and, second, that there is no established federal constitutional privilege or principle preventing the imposition of a state income tax upon salaries received from the R. F. C. and the R. A. C. C., because the imposition of such a tax neither precludes nor threatens unreasonably to obstruct any function essential to the continued existence of the Federal Government, and because the burden on the Federal Government is so speculative and uncertain that, if the immunity were allowed, it would restrict the state taxing power without affording any corresponding tangible protection to the Federal Government.

Respectfully submitted,

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